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OFFICE OF PETITIONS

In re Application of	:	
Manz et al.	:	
Application No. 10/821,308	:	DECISION ON PETITION
Filed: April 9, 2004	:	
Atty Docket No. 5454-6	:	

This is a decision on the PETITION FOR CORRECTION OF FILING DATE PURSUANT TO 37 C.F.R. § 1.53(e) filed November 8, 2004, requesting that the above-identified application be accorded a filing date of April 9, 2004.

The application was deposited on April 9, 2004. However, on June 22, 2004, the Office mailed a "Notice of Incomplete Nonprovisional Application" stating that the application papers had not been accorded a filing date because the application was deposited without drawings. (In addition, the Notice set forth a distinct requirement for a signed oath or declaration.)

On August 19, 2004, applicants filed a response, which included a copy of the 6 sheets of drawings as petitioner maintains the sheets were submitted on original filing (and an executed declaration). No petition accompanied this filing. Accordingly, the Office accorded the application a filing date of August 19, 2004, the date of receipt of drawings.

In response, the present petition was filed. Petitioner maintains that the six sheets of drawings were filed as part of the original application papers, and also as part of the priority document filed concurrently with the original application papers, and so unquestionably have been part of the file of the application from the date the application was filed. In support thereof, applicants submit the declaration of patent attorney Roger Thompson.

Petitioners' evidence has been considered, but not found persuasive that drawings were filed as a part of the original application papers. Papers not present in the application file are not considered present in the application absent convincing evidence to the contrary (e.g., a postcard receipt under MPEP § 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue)

that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.) The petition does not include convincing evidence that the drawings were present as part of the original application papers filed on April 9, 2004.

Nonetheless, a review of the priority document submitted April 9, 2004, reveals that it does include six (6) sheets of drawings containing Figures 1 to 7 which are identical to Figures 1 to 7 which were intended to be filed on April 9, 2004, and which appear to correspond to the figures described in the specification¹. Accordingly, on petition, the drawings in the priority document will be construed as the drawings for this application for filing date purposes.

The petition is GRANTED.

The petition fee will not be refunded since the present petition and petition fee were necessary in view of applicant's filing error.

The application file will be returned to the Office of Initial Patent Examination for

- correction of the filing date to April 9, 2004, using the six (6) sheets of drawings containing Figures 1-7 supplied on August 19, 2004, and an indication in Office records that six (6) sheets of drawings were present on filing.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ The priority document is 17 pages long including unnumbered pages (10-15) corresponding to the drawing sheets containing Figures 1 to 7. The priority document also includes an unnumbered page 17 which contains a lone figure 6 which appears to be identical to the FIG 6 shown on page 15 (with FIG 7).